



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

CEM
Mr. Lupton
14108

OFFICE OF GENERAL COUNSEL
B-198124

June 20, 1980

[Request for Relief of Liability for Loss of Funds]

Mr. George L. Reaves, Jr.
National Representative
National Association of
Government Employees
Tower Box 65
2101 Executive Drive
Hampton, VA 23666

Dear Mr. Reaves:

We refer to your letter of April 22, 1980, on behalf of Ms. Brenda J. Faulkner, an employee of the United States Coast Guard Reserve Training Center, Yorktown, Virginia.

In October, 1975, while Ms. Faulkner was serving as an accountable officer she sustained a loss of funds in the amount of \$1,440.60 from her account. Unless relieved therefrom, she would be pecuniarily liable for any shortages in that account. We have been informally advised that the Chief Counsel of the Coast Guard determined that her negligence contributed to the loss and refused to support her request for relief from liability for the loss. Hence, that agency has begun to withhold small installments from her pay as a setoff against the amount she is in arrears.

As her representative you allege that the Coast Guard failed to observe certain procedural due process requirements incident to the withholding action. You have therefore appealed to this Office requesting us to conduct an investigation and arrange for an administrative hearing on the matter. Also, you have requested us to terminate the withholding action pending the outcome of the proposed investigation and hearing. For the reasons set forth below, we are unable to honor your requests.

Recently, the Honorable Paul S. Tribble, Jr., Ms. Faulkner's Congressional representative, asked us to consider her request for relief of liability. In our letter to him, B-198124, April 21, 1980, one day prior to the date of your letter to us, we set forth the legal rationale for our inability to grant relief of liability in this case. We have enclosed a copy of our letter to Congressman Tribble for your information.

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Under provisions of 31 U.S.C. § 82a-1, certain statutory criteria must be satisfied before we may grant relief. That statute reads in pertinent part as follows:

"§ 82a-1. Relief of accountable officers of liability for loss

"The General Accounting Office is authorized, after consideration of the pertinent findings and if in concurrence with the determinations and recommendations of the head of the department or independent establishment concerned, to relieve any disbursing or other accountable officer * * * charged with responsibility on account of physical loss or deficiency of Government funds, * * *, if the head of the department or independent establishment determines (1) that such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent."

The above quoted provision requires the head of the agency to make certain specific determinations including a finding that the loss occurred without fault or negligence on the part of the accountable officer while acting within the scope of his employment. Assuming the agency head makes the determinations required by the above provision, relief may be granted if this Office concurs with the determinations. However, when the agency head refuses to find that the statutory criteria for relief has been satisfied, in this case, that there was no contributory fault or negligence on the part of the accountable officer, we have no authority to review and overturn the agency's finding and substitute our own. 59 Comp. Gen. 113 (1979). Accordingly, if you believe that the agency has erred in its consideration of the case, we suggest that you contact the Coast Guard and request reconsideration of the agency's findings and conclusions, stating the grounds for your request.

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Whenever an agency denies an accountable officer's request for relief of liability for lost funds, the accountable officer becomes indebted to the Government for the amount involved. It is mandatory that the provisions of 5 U.S.C. § 5512 (1976) concerning the withholding of pay of an employee in arrears be applied. 37 Comp. Gen. 203 (1959), B-196855, December 18, 1979; B-190809, March 14, 1978. The provisions of 5 U.S.C. 5512(a) read as follows:

"(a) The pay of an individual in arrears to the United States shall be withheld until he has accounted for and paid into the Treasury of the United States all sums for which he is liable."

However, we call your attention to the provisions of section 5512(b) which may afford your principal the opportunity for a full scale review of her case which you are seeking. Subsection (b) states:

"(b) When pay is withheld under subsection (a) of this section the General Accounting Office, on request of the individual, his agent, or his attorney, shall report immediately to the Attorney General the balance due; and the Attorney General, within 60 days, shall order suit to be commenced against the individual.

These provisions do not empower GAO to review an agency's withholding action. However, where collection action against an accountable officer is initiated under this statute and pay is withheld, the accountable officer may request this Office to report the balance due to the Attorney General who is required to initiate suit against the accountable officer within 60 days. If you elect to pursue this remedy rather than appealing to the Coast Guard for a reversal of its adverse determination, please send us the request referred to in subsection (b), above, and we will send the necessary report to the Attorney General as quickly as possible.

Sincerely yours,

Harry R. Van Cleave
for Milton J. Socolar
General Counsel

Enclosure